

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC, on)	
Behalf of Its Subsidiaries and Affiliates)	CSR-7163-E
)	
Petition for Special Relief (Determination of)	
Effective Competition) in Four Communities)	
in California)	

MEMORANDUM OPINION AND ORDER

Adopted: May 29, 2008

Released: May 29, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC (“Comcast”), on behalf of its subsidiaries and affiliates, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(1)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). No opposition to the Petition has been filed, although the City of Brentwood (the “City”) did file Comments.³

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁶ For the reasons set forth below, we grant the petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2).

³Comments of the City of Brentwood, California, to Comcast’s Petition for Special Relief (“Comments”), dated July 19, 2007.

⁴47 C.F.R. § 76.906.

⁵See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁶See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁷ This test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁸

5. Turning to the first prong of this test, it is undisputed that these Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁹ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.¹⁰ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.¹¹ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹² and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹³ Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.¹⁴ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in all but one the Communities.¹⁵ Petitioner sought to

⁷47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁸47 C.F.R. § 76.905(b)(2)(i).

⁹*See* Petition at 2-3.

¹⁰*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹¹47 C.F.R. § 76.905(e)(2).

¹²*See* 47 C.F.R. § 76.905(g). *See also* Petition at 4.

¹³*See* Petition at 4 & Exh. 1.

¹⁴*See id.* at 2-3.

¹⁵*See id.* at 5. In circumstances where the largest MVPD is unable to be identified (here, in Brentwood, CUID CA 0556), the Commission is able to determine that the second prong is met by making dual assumptions. First, we assume that Petitioner is the largest MVPD provider in the Community and determine that the combined DBS

(continued....)

determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code and zip code plus four basis where necessary.¹⁶

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁷ as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

8. The City of Brentwood filed “Comments,” which were untimely.¹⁸ We will consider them as informal comments.¹⁹ The City does not dispute that Petitioner has shown that it is subject to effective competition in Brentwood.²⁰ Rather, the City notes what is, in its opinion, an oddity in the data submitted by Petitioner. Specifically, DBS penetration in Brentwood is close to twice as high as it is in the three other Communities, although all four Communities are close to each other.²¹ The City does not suggest any reason for this difference, and neither did Petitioner. The City asks not that we deny the Petition, but rather that we note its skepticism of Petitioner’s claimed DBS penetration in Brentwood.²² We take respectful note of the City’s skepticism. As the City acknowledges, however, this does not defeat the petition for Brentwood. Even if, as the City believes,²³ DBS penetration in Brentwood is similar to that in the three other Communities, it is still more than twice the minimum needed to show competing provider effective competition.

9. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

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subscribership is greater than 15 percent; we then assume that one of the DBS providers is the largest MVPD in the Community and determine that Petitioner’s subscribership is greater than 15 percent. When both determinations can be made, then the second prong of the competing provider test is met. *See* Attachment A.

¹⁶Petition at 5, 7. A zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information.

¹⁷Petition at 7.

¹⁸The City filed its Comments on July 19, 2007. Comcast’s effective competition petition was placed on public notice April 24, 2007. *See* Special Relief and Show Cause Petitions, Public Notice, Report No. 0207 (MB, rel. April 24, 2005). Pursuant to 47 U.S.C. § 76.7(b)(1), oppositions or comments must be filed within 20 days after the date of public notice of the filing of such petition. Therefore, the City should have filed its Comments on or before May 18, 2007.

¹⁹*See Bright House Networks, LLC*, Memorandum Opinion & Order, 22 FCC Rcd 690, ¶ 1 (2007).

²⁰Comments at 3 (“The City . . . believes that Comcast has met both prongs of the effective competition test, thus we do not oppose Comcast’s Petition for Special Relief.”).

²¹*Id.* at 2.

²²*Id.* at 3.

²³*Id.*

III. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates **IS GRANTED**.

11. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

12. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

²⁴ 47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7163-E

COMMUNITIES SERVED BY SUBSIDIARIES AND AFFILIATES OF
COMCAST CABLE COMMUNICAITONS, LLC

Community	CUID(s)	CPR*	2000 Census Households	Estimated DBS Subscribers
Antioch	CA0351	33.44%	29338	9810
Brentwood	CA0556	59.04%	7497	4426
Oakley	CA1607	34.00%	7832	2663
Pittsburg	CA0359	32.05%	17741	5686

*CPR = percent of competitive DBS penetration rate.